



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, PE, Chair

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Arnold
Schwarzenegger
Governor

Linda S. Adams

Secretary for
Environmental Protection

17 November 2008

Mr. Frank Alvin Rogers, Jr.
Rogers Trucking
3832 Holloway Road
Colusa, CA 95932

CERTIFIED MAIL
7008 1140 0002 8805 5148

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0620, ROGERS TRUCKING, COLUSA COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385. The Complaint charges Frank Alvin Rogers Jr. and Rogers Trucking (Discharger) with civil liability in the amount of **forty eight thousand dollars (\$48,000)** for the 25 April 2007 aqua ammonia spill into surface waters, and the resulting fish kill, which occurred near Tule Road in Colusa County.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **17 December 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting both this waiver and a letter describing the issues to be discussed to this office by **17 December 2008; or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Wendy Wyels. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

California Environmental Protection Agency



If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 17 December 2008**), then a hearing will be scheduled for the **5/6 February 2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. A Notice of Public Hearing is enclosed with this letter, and provides specific information about the procedures that will be used at the hearing, if one is scheduled.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Wendy Wyels, **no later than 5 p.m. on 17 December 2008**. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 17 December 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

Also enclosed for your information is a proposed draft of the Hearing Procedures. If this matter is heard before the Central Valley Water Board, then the hearing will follow a process similar to that described in this document. This proposed draft version of the hearing notice has been prepared by the Enforcement Staff, and is subject to revision and approval by the Central Valley Water Board's Advisory Staff. The Central Valley Water Board's Advisory Staff will finalize the Hearing Procedures and provide you a copy shortly. The Advisory Staff may need to contact you directly; therefore, by **21 November 2008**, please provide me with your fax and e-mail address.

To claim an inability to pay this Administrative Civil Liability Complaint, the Discharger must submit a statement of financial conditions by **17 December 2008** that substantiates its claim.

For your information, we have attached a description of the factors that were considered, pursuant to CWC section 13385(e), in assessing this civil liability.

In order to conserve resources, paper copies of the referenced documents are only being sent to the Discharger. Interested persons may download the documents from the Central Valley Water Board's Internet website at http://www.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml. Copies of these documents can also be obtained by contacting the Central Valley Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact me by phone at (916) 464-4835 or by e-mail at wwyels@waterboards.ca.gov.

WENDY WYELS

Environmental Program Manager

Compliance and Enforcement Section

Enclosure: Factors Considered in Assessing Penalty
ACLC No. R5-2008-0620
Proposed Draft Notice of Public Hearing

cc w/o encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Ms. Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Danielle Teeters, California District Attorneys Association, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Warden Bryon Hernandez, Department of Fish and Game, Region 2, Rancho Cordova
Colusa County Environmental Health Department, Colusa
Mr. Lewis Bair, Reclamation District 108, Grimes
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton

Administrative Civil Liability Complaint R5-2008-0620

Factors Considered in Assessing Liability

Nature and Circumstances

On 25 April 2007, a driver working for Rogers Trucking Company accidentally caused a spill of approximately 6,800 gallons of aqua ammonia. The spill was not reported to the Office of Emergency Services or any other regulatory agency. The ammonia flowed into an irrigation ditch connected to the Reclamation District 108 canal system. Two days later, California Department of Fish and Game (CDFG) wardens were notified that dead fish were present in the canal system. An investigation found dead fish in over 15 miles of canals downstream of the point that the aqua ammonia entered the waterway.

Gravity

The spill was an accident, but the Discharger had a duty to report the spill. Failing to do so resulted in a greater environmental impact; caused the CDFG to expend resources on a full investigation; and caused Reclamation District 108 to expend resources to modify its pumping and delivery system, sample the water, and remove and dispose of the dead fish.

Toxicity

Aqua ammonia is acutely toxic to aquatic life. The spill caused the death of over 3,500 fish and other aquatic organisms. To maintain a healthy population of aquatic life, the CDFG has determined that undissociated ammonia concentrations should not exceed 0.02 mg/L. Two days after the spill, the concentration was 427 mg/L, over 21,000 times higher than the limit.

Susceptibility of the Discharge to Cleanup

If the Discharger had notified any agency of the spill, then the impact to aquatic life could have been minimized. For example, Reclamation District 108 could have turned off its pumps near the spill point, which would have confined the spill to a smaller area. Pumper trucks could have been used to remove contaminated water from the irrigation canal. Impacted soils should have been removed and properly disposed of. However, the lack of notification of any agency precluded any cleanup from taking place.

Ability of the Discharger to Pay

The business address of the Rogers Trucking is 3832 Holloway Road, Colusa, California 95932. Staff conducted an investigation into the address of the business, and determined that there are several businesses at this location, including Nor Cal Ag Rentals, Inc., Moore Aviation, Inc., and Louis Putnam Auctioneers, Inc. Nor Cal Ag Rentals, Inc. is also owned by Mr. Frank Alvin Rogers, Jr. Mr. Rogers also owns B&S Trucking, another trucking company located in Colusa County. In addition, Mr. Rogers also owns several properties in Colusa and Sutter Counties. There is no indication that the Discharger would be financially incapable of paying the assessed liability.

Voluntary Cleanup Efforts

No effort was made by the Discharger to clean the waterways. Reclamation District 108 incurred the cost of removing the dead fish from the canals and disposing of the carcasses at a rendering plant. Someone attempted to clean the soil at the spill site; however, the action of flushing the contaminated soil with water almost certainly resulted in additional aqua ammonia entering the waterway.

Prior History of Violations

Central Valley Water Board staff are not aware of any prior water quality violations attributed to this Discharger.

Degree of Culpability

As the owner of a trucking company, the Discharger must be aware of the type of materials that it hauls and what to do in the event of a spill. The Discharger must also train its employees about the steps to take in the event of a spill. The Discharger was hauling aqua ammonia, a commonly used fertilizer in the Colusa area. The Material Data Safety Sheet for ammonium hydroxide solution 24.9% (i.e., aqua ammonia) states that the material is "toxic to fish and aquatic life. Reportable quantity for a spill is 1000 pounds. Do not contaminate any body of water by direct application, cleaning of equipment, or disposal." Central Valley Water Board staff calculate that the 4,800 gallons which spilled is equivalent to over 8,000 pounds. It was the Discharger's responsibility to immediately report the spill to the Office of Emergency Services so that measures could be taken to minimize the environmental impact. Even if less than 1,000 pounds had spilled, the Discharger still had the duty to report the spill.

Economic Benefit

The Discharger received an economic benefit by not training its truck drivers about the steps to take in the event of a spill, and by not supplying its trucks with spill containment kits (shovel, absorbent material, etc.). The Discharger also received an economic benefit by not appropriately removing the contaminated soil or taking actions to prevent the spread of the ammonia once it entered the irrigation canal. Central Valley Water Board staff is unable to precisely calculate the economic benefit, but it is estimated to be below the assessed penalty.